



II-1 (VATForum)-2

EU VAT FORUM
MEETING OF 14 OCTOBER 2015
FIRST MANDATE REPORT
(2012-2015)

This report presents an overview of the activities of the EU VAT Forum during its first 3 years period, starting on 1 October 2012. It also contains some reflections from the Commission services on the risks, challenges and possible improvements for the second 3 years period (1 October 2015 – 30 September 2018).

The EU VAT Forum participants were invited to contribute in the preparation of this document, by sending their comments and suggestions.

1. INTRODUCTION

1.1. Historical background

The EU VAT forum was set up by a Commission Decision of 3 July 2012¹ to allow businesses and tax authorities to exchange views and best practices with the aim of improving the smooth functioning of the current EU VAT system.

The creation of the EU VAT Forum followed earlier steps to call upon the expertise of business representatives for the management of the VAT system:

- On 1 December 2008, the Commission presented a Communication to the Council, the European Parliament and the European Economic and Social Committee on a coordinated strategy to improve the fight against VAT fraud in the European Union (COM(2008)807 final). This document contained a short-term action plan for combating VAT fraud, but it also suggested a reflection on a longer-term approach that could take into account technological developments and new strategies regarding compliance and monitoring, with the overall aim of reducing the involvement of tax authorities and the administrative burden on business.
- A 'business experts group on a smooth functioning of the VAT in the EU', also known as "the business expert group on VAT (BEGV)", was set up in March 2010, in order to discuss at EU level the actual practical problems that arise from managing the VAT system as it is implemented in the Member States, as well as suggestions for possible solutions for reducing the administrative burden.

¹ Decision 2012/C 198/05, OJ C 198 of 6 July 2012.

- On 23 February 2011, Member States agreed on setting up a new ad hoc expert group, known as the 'tax authorities' dialogue platform' (TADP). The frequently changing business environment prompted some Member States to develop a customer-led business strategy which is based on understanding the different groups of taxpayers/customers, their behavior and the difficulties they experience when dealing with tax authorities – from the individual filing of a tax return to the needs of a large business. The aim of this approach was to create a level playing field for compliant businesses for fairer competition and to allow tax authorities to allocate resources to combat fraud more efficiently.

Both expert groups prepared the dialogue between tax authorities and business experts which is now taking place in the EU VAT forum.

1.2. Composition of the EU VAT Forum

The EU VAT Forum consists of Members States' VAT authorities and of 15 organisations representing business and tax practitioners. The business organisations were selected on the basis of a call for applications. A first appointment of business organisations was made for a three year mandate starting on 1 October 2012. A new call for applications was made in 2015, in order to allow a new designation of business organisations for another three year mandate starting on 1 October 2015.

The mixed composition of the EU VAT Forum is unique among experts groups in indirect taxation. It allowed tax authorities and business to discuss topics of common interest in an informal but structured way.

2. WORK ORGANISATION

According to its rules of procedure, the EU VAT Forum can choose the most appropriate format for its members to deal with the works of the EU VAT Forum, in particular to create thematic sub-groups, designated as "working groups", to examine particular issues.

After the identification of topics of common interest, several thematic sub-groups of the EU VAT Forum have been constituted (see table below). They were given a mandate to examine precise issues and report back to the EU VAT Forum in its “plenary” composition.

Dates Creation (and end)	Participants	Number of meetings
EU VAT Forum (plenary meetings) (current status: active)		
- first period: 2012 – 2015	- Member States (on a voluntary basis) - all Business members	6 meetings: - 15.01.2013 - 29.04.2013 - 03.12.2013 - 24.06.2014 - 16.02.2015 - 11.05.2015

Sub-group: VAT Cross border rulings (CBR) (current status: active)		
June 2013 – Sept. 2018 (pilot project)	- 2 nd half of 2013: 13 States - 2014 – 1 st half of 2015: 15 States - all Business members	3 meetings: - 20.05.2014 (CBR contact persons) - 20.05.2014 (+ business members) - 16.02.2015 (CBR contact persons)
Sub-group: Proof of intra-Community supplies (current status: terminated)		
July 2013 – Dec. 2013	- 13 Member States - 9 Business members	3 meetings: - 31.07.2013 - 04.10.2013 - 20.11.2013
Sub-group TABECFAF (Tax Authorities and Business – Enhanced Cooperation and Fight Against Fraud) (current status: active)		
April 2013 – ...	- 16 Member States - 10 Business members	7 meetings: - 14.01.2014 - 14.05.2014 (Member States only) - 21.05.2014 (business only) - 17.11.2014 - 13.01.2015 - 27.04.2015 (technical meeting) - 28.04.2015

3. OVERVIEW OF THE MAIN TOPICS DISCUSSED IN THE EU VAT FORUM AND ITS SUB-GROUPS

3.1. Actions relating to the general application of VAT

3.1.1. VAT Cross Border Rulings (CBR) pilot project

The most tangible outcome of the first activity period of the EU VAT Forum is the EU VAT Cross Border Rulings (CBR) pilot case. It started on 1 June 2013. Initially, 13 Member States agreed to participate (Belgium, Estonia, Spain, France, Cyprus, Lithuania, Latvia, Malta, Hungary, Netherlands, Portugal, Slovenia and the United Kingdom). A specific CBR sub-group was set up to monitor this pilot project.

Two other Member States joined in the beginning of 2014 (Sweden and Finland).

In June 2014, the Interim Report of the sub-group on Cross-Border Rulings (CBR) and the decisions of the EU VAT Forum on the recommendations of the CBR sub-group were published in all languages. They contained clarifications with regard to the conditions and the working methods applied to the CBR requests.

Detailed information on the conditions and the procedure of this CBR project is available in all official EU languages via the DG TAXUD-EUROPA website.

Thanks to the first learning experience of the pilot case, participating Member States also agreed to share information about these CBR opinions. A first list of opinions was attached to the interim report of 11 June 2014; an updated list was published on the DG TAXUD-EUROPA website on 20 March 2015. Making these practical cases available could save time for business as well as tax administrations.

Taking into account the positive appreciation of the CBR sub-group, expressed at its meeting on 16 February 2015, the EU VAT Forum followed the suggestion of this sub-group – strongly requested and supported by the business – to continue the pilot case till the end of the current mandate of the EU VAT Forum, i.e. till 30 September 2018.

In June 2015, another Member State (Denmark) decided to join this pilot case, raising the total number of participating countries to 16 Member States.

It is important to note that participation in the CBR pilot is done on a voluntary basis. Participating Member States in principle apply their own national rules governing the ruling requests.

The CBR sub-group identified a few deficiencies in the current CBR framework: in several cases, the time to get an answer to the ruling requests was quite long. Moreover, the Member States concerned may have dissenting opinions on the VAT treatment of a specific cross-border transaction. In that case, their replies may still be useful, insofar as they provide valuable information to the taxable person, but their answers do not solve his problem. On this point, the EU VAT Forum considered that the issue may be referred to the VAT Committee. It should however be noted that this does not guarantee an agreed solution neither, and certainly not a speedy one.

3.1.2. Cross border dialogue in case of double taxation disputes

At its meeting on 11 May 2015, several Member States in the EU VAT Forum agreed to the TABECFAF sub-group suggestion to complement the CBR pilot with the possibility for taxable persons to ask for a dialogue between the Member States concerned in case of double taxation of a single transaction. Some Member States indicated that they already have such a dialogue practice.

Contrary to the CBR rulings, which relate to planned transactions which in principle are not yet realised, such a dialogue between the competent VAT authorities of different Member States may help to solve issues of double taxation of transactions that took already place in the past. However, there is no guarantee (and no obligation) that the Member States concerned come to an agreement on the VAT treatment of the transactions at stake. Just as the CBR initiative, the dialogue commitment is based on a voluntary cooperation.

3.1.3. The proof of intra-Community supplies

During the discussions within the Group on the future of VAT and the VAT expert group, Member States wanted to ascertain whether it is possible to improve the functioning of the current VAT “transitional” system with regard to intra-Community supplies. The EU VAT Forum set up a specific working group to consider the proof of dispatch or transport to another EU Member State required to VAT exempt intra-Community supplies of goods. 13 Member States and representatives from 9 business organisations participated in the sub-group. Two rapporteurs, one from business members and one from the participating Member States, coordinated the works. Three meetings of the sub-group took place. In addition, two questionnaires were sent to all participants, to enable members of the sub-group to gain an understanding of current practices in Member States. Business members also shared information on the commercial documentation which could be provided in different scenarios as proof of the dispatch or transport of goods in case of an intra-Community supply. The report acknowledged by the EU VAT Forum was officially and timely transmitted to the requesting experts groups (VAT Committee and group for the future of VAT).

3.1.4. Voluntary disclosure

The TABECFAF sub-group prepared a report on the use of voluntary disclosure schemes, in view of promoting an environment where business is encouraged to disclose mistakes. The working document examined the features and conditions of an effective voluntary disclosure program. The good practices identified by this sub-group were converted in suggestions for the EU VAT Forum which acknowledged them as being beneficial for tax authorities as well as for taxpayers. This report was discussed and finally endorsed by the EU VAT Forum at its meeting on 11 May 2015.

The exchanges on this topic showed a general consensus about the usefulness of this approach for both tax authorities as well as business, in particular for mistakes that have no impact on VAT revenues.

3.1.5. Fight against VAT fraud

The TABECFAF sub-group also focused on how business could support VAT authorities in their efforts to fight VAT fraud, in particular missing trader fraud.

Within this area, following the request of some Member States and businesses, a Fiscalis Project group was set-up (FPG 51) in order to establish a model of memorandum of understanding (MOU) for better cooperation between business and tax administrations in trying to limit misuse of business products (e.g. falsifying, sales outside the normal business circuits, etc.) and to identify fraudulent traders not acting according to common business practice. Its purpose is to identify where and how the internal business controls and the controls carried out by tax administrations can be used in a complementary manner. A report of this project group is expected early 2016.

3.2. Discussions and actions relating to specific topics

The EU VAT Forum and its TABECFAF sub-group also dealt with a number of questions relating to specific topics, raised by business representatives.

On this point, the Forum was confronted with the boundaries of its competence, which limited its action and discussion possibilities. This is illustrated by the following examples:

- questions were raised about the Hungarian authorities' decision to introduce new reporting obligations relating to intra-Community transport of goods (EKEAR). On this point, information was provided with regard to these new rules and their entry into force, but the EU VAT Forum considered that it was not appropriate to have a discussion on these rules, interfering with the complaints soliciting the Commission to launch an enquiry on the conformity of these new rules with EU law;
- the TABECFAF sub-group prepared a detailed working document on a question concerning the VAT treatment of export of goods after work on these goods performed in another Member State, following a business request for a simple and uniform VAT treatment which would help to avoid distortions of competition at the international level. An interpretation/simplification suggestion was made, but the EU VAT Forum agreed that this suggestion had to be transferred to the VAT Committee for further discussions and (possible) conclusions.

4. CHALLENGES AND RISKS

4.1. Reluctance of several Member States to participate

The participation in the EU VAT Forum takes place on a voluntary basis. Some Member States are reluctant or at least hesitating to invest time in (some of) the EU VAT Forum's activities and discussions, for several reasons.

4.1.1. Workload

A first element of concern, in particular for the Member States, is the workload, not only for the persons preparing and participating in the meetings of the Forum itself and its sub-group meetings, but also for those ensuring the follow-up of decisions and projects.

This concern was clearly demonstrated when Member States were invited to join the CBR pilot project. Several Member States were hesitating, in view of the possible workload for the authorities involved. So far, however, the number of CBR requests remains moderate.

4.1.2. Fear of being pushed to accept (new) commitments and obligations

Moreover, some Member States expressed the fear that any such discussion at EU level about best administrative practices and enhanced cooperation with business inevitably creates (new) expectations from business, asking the authorities for clear(er) and strong(er) commitments. There is also the perception that the EU VAT Forum activities and projects may ultimately pave the way for new Commission initiatives, trying to increase VAT harmonisation and to impose new obligations on the national tax authorities. The argument that the administration of the VAT rules is a national competence and that the EU Treaty does not allow a harmonisation of procedural tax rules was also put forward.

The Commission wishes to observe that the obvious and reasonable desire of business to improve the functioning of the VAT system indeed leads to more expectations towards the VAT authorities. This is legitimate since companies are assisting the authorities in collecting the VAT. In addition, procedural tax rules are fully part of the tax rules² and the EU VAT Forum decisions or agreements are based on a voluntary participation, since this forum is not a legislative body.

4.2. Working methods and facilities

4.2.1. The need for flexibility

With regard to the working methods, it should be noted that an important part of the discussions was about establishing a working program, setting priorities and organising the work. This has taken some time, not because of the absence of topics of common interest, but because of other reasons, including:

² See EUCJ 26 January 2006, case C-533/03, *Commission v. Council*, points 47 and 63.

- the time needed to get acquainted with the presence of other persons, the EU VAT Forum being an innovative setting where VAT authorities face business representatives;
- the difficulty to determine how this forum can help to cooperate in the fight against VAT fraud;
- the difficulty to find sufficient input to feed the discussion and produce working documents.
- the limited availability of suitable meeting rooms at the moment when they are needed.

In this respect, adapting the format of the meetings according to the needs (thematic sub-groups; separate meetings of categories of participants) helped to optimally feed the discussions in the EU VAT Forum. The preparatory works in small groups also helped to reduce the difficulties to dispose of meeting rooms adapted to many participants or equipped with interpretation facilities. Further, at its meeting on 24 June 2014, the EU VAT Forum agreed that the use of Fiscalis resources may be appropriate for certain activities (e.g. the creation of the Fiscalis project Group on VAT fraud, preparing the Memorandum of Understanding). At its meeting on 16 February 2015, the EU VAT Forum also agreed on the possibility to have technical meetings of the EU VAT Forum without interpretation.

This flexibility should be maintained to make sure that sufficient input is available for discussion and outcome in the EU VAT Forum plenary session.

At the same time, it remains a challenge to combine this flexibility with the justified wish of many participants to get an early planning of the meetings of the various groups, in view of possible contingencies. On this point, the Commission will strive as much as possible to fix sufficiently in advance – at least as "tentative" – the meetings of the EU VAT Forum itself.

4.2.2. The need for effectively available expertise

Until now the Commission had a pivotal role in the circulation of information and the preparation of questionnaires and working documents. However it is important that all participants are empowered and contribute effectively. For instance, it could be for the "rapporteur" of each sub-group to ensure a feedback on the state of play after each meeting and make sure that a working document is prepared and will be presented to the EU VAT Forum.

The Commission decision setting up the EU VAT Forum limited the number of business representatives to maximum 15 persons (with the possibility for each of these representatives to be replaced by one alternate). Accordingly, it could be considered to invite external experts to present their analysis and observations on specific topics, and contributing in this way to the discussions of the EU VAT Forum or its sub-groups. A co-operation with other parties, possibly under the umbrella of the Fiscalis program, could also be considered.

4.2.3. Public availability of information about the EU VAT Forum's activities

It appeared that public access to information about the works of the EU VAT Forum during its first three years period was not optimal, as it was difficult to find the information concerned on the public websites, notably "CIRCABC" or "TAXUD on EUROPA" where EU VAT Forum documents are stored. The recent revamp of the TAXUD on EUROPA website offers a possibility for improvement. The Commission intends to discuss further publication improvements within the EU VAT Forum.

5. CONCLUSIONS

What has been seen as most positive in the setting up of the EU VAT Forum is the opportunity for exchanging views directly between business representatives and Member States' delegates. This is what distinguishes the EU VAT Forum from other experts groups. Almost all Member States and all business members appreciated this composition. A growing level of mutual trust could be experienced, which is essential for the aim of co-operation between business and VAT authorities. Business should be seen as a partner in the VAT collection process and in the fight against VAT fraud. This co-operative spirit allowed the EU VAT Forum to agree on several important initiatives and decisions.

Building on these first positive results, the Forum should now discuss its future plans to create a better VAT compliance environment, beneficial for Member States' tax authorities as well as legitimate businesses, in the interest of citizens.

Together with all VAT Forum participants, the Commission will continue to improve the practical organisation of the work of the EU VAT Forum, including as regards the sub-group or technical preparatory meetings, in view of the (new) topics to be discussed. Particular attention will be given to the circulation of documents and information between sub-groups and the VAT Forum, as well as the information to the public and dissemination of results to taxpayers and tax officials.